

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Lynchburg Division

IN RE:

KATHERINE MICHELE MARCELLUS
GREGORY EUGENE MARCELLUS

Debtors

Case No. 17-60419-RBC
(Chapter: 13)

FIRST GUARANTY MORTGAGE
CORPORATION

Movant

v.

KATHERINE MICHELE MARCELLUS
GREGORY EUGENE MARCELLUS,
PATRICIA ANN MITCHUM, Co-Debtor, and
HERBERT L. BESKIN, Trustee

Respondents

**ORDER MODIFYING AUTOMATIC STAY AND
GRANTING RELIEF FROM CO-DEBTOR STAY**

Upon consideration of the Motion for Relief from Automatic Stay and Co-Debtor Stay (“Motion”) filed by First Guaranty Mortgage Corporation (“First Guaranty”) any response thereto, no response having been filed by the Co-Debtor, the consent of the Debtors having been given, and good cause having been shown; and

WHEREAS, on or about February 26, 2016, Katherine Michele Marcellus and Patricia Ann Mitchum (collectively the “Obligors”) executed and delivered to First Guaranty Mortgage Corporation, a Corporation a Note in the amount of TWO HUNDRED FIFTY-EIGHT

Kathryn Smits, Bar #77337
Sameera Navidi, Bar #89441
Orlans PC
PO Box 2548
Leesburg, Virginia 20177
(703) 777-7101

THOUSAND FOUR HUNDRED EIGHTY-SEVEN DOLLARS AND NO CENTS (\$258,487.00)

plus fixed interest at the rate of 4.25% per annum, to be paid over thirty (30) years; and

WHEREAS, to secure the repayment of the sums due under the Note, Katherine Michele Marcellus and Patricia Ann Mitchum executed and delivered to First Guaranty Mortgage Corporation, a Corporation a Deed of Trust dated February 26, 2016, encumbering the real property ("Property") more particularly described in the Deed of Trust as:

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND WITH ALL IMPROVEMENTS THEREON AND APPURTENANCES THEREUNTO BELONGING, LYING, BEING AND SITUATED IN MADISON DISTRICT, CUMBERLAND COUNTY, VIRGINIA, AS SHOWN AND DESCRIBED ON PLAT OF SURVEY ENTITLED "PLAT SHOWING 11.799 ACRES OF LAND LYING ON THE EAST LINE OF U.S. ROUTE NO. 60, MADISON DISTRICT-CUMBERLAND CO., VA". PREPARED BY WOODROW K. COFER, CERTIFIED LAND SURVEYOR, DATED APRIL 4, 2003, REFERENCE TO WHICH IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF THE PROPERTY HEREIN CONVEYED.

TAX ID NUMBER [REDACTED]

BEING THE SAME PROPERTY AS TRANSFERRED BY TRUSTEE'S DEED ON 11/10/2014 AND RECORDED 01/26/2015 FROM ATLANTIC TRUSTEE SERVICES, L.L.C., A VIRGINIA LIMITED LIABILITY COMPANY AND SUBSTITUTE TRUSTEE UNDER A DEED OF TRUST MADE BY VERONICA R. BEAGLE AND DALTON H. BEAGLE TO THE BANK OF NEW YORK MELLON. FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATE-HOLDERS OF CWMBS, INC., ASSET-BACKED CERTIFICATES SERIES 2007-2, RECORDED IN DOCUMENT NUMBER 20150065.

with the address of 4 Fitzgerald Road, Cumberland, VA 23040; and

WHEREAS, the Debtors have failed to make eight (8) post-petition payments in the amount of \$1,734.68 each for the months of December, 2017 through July, 2018 and are in arrears post-petition for \$12,893.69, which amount includes \$681.00 representing attorneys' fees and costs incurred by First Guaranty in filing the Motion for Relief from Automatic Stay and Co-Debtor Stay, and provides for a credit of \$1,664.75 in Debtors' suspense; and

WHEREAS, the parties desire to resolve this matter without the risks and costs of litigation.

It is by the United States Bankruptcy Court for the Western District of Virginia, Lynchburg Division,

ORDERED, that the automatic stay is modified as follows:

- (a) The Debtors shall cure the Arrearage for the months of December, 2017 through July, 2018 including attorney fees totaling \$12,893.69 through the filing and confirmation of a Modified Chapter 13 Plan; and
- (b) The Modified Plan will be filed within twenty-one (21) days from the date of entry of this Order Modifying Stay and nothing in this Order shall prevent the Trustee or other creditors from filing objections, if they deem it appropriate to do so; and
- (c) First Guaranty will amend their Proof of Claim (Claim 18-1) to include the post-petition arrearage; and
- (d) In addition to curing the Arrearage, the Debtors will establish a recurring and automatic bill pay at their bank for the ongoing mortgage payments to First Guaranty (mailing address if needed: Fay Servicing, LLC, 3000 Kellway Drive., Ste. 150, Carrollton, TX 75006) starting with the August, 2018 payment in the amount of \$1,734.68 beginning on August 1, 2018 and continuing on the same day of each and every month thereafter until the Note is paid in full; **and notwithstanding the agreement of the parties the Court may require the debtors to appear and show cause at the hearing on confirmation of the plan why they did not comply with the Court's previous requirement to make mortgage payments by a recurring and automatic bill pay and why they are not paying the mortgage payments by means of a conduit**; and it is further

ORDERED, that in the event that the Modified Chapter 13 Plan is not filed within twenty-one (21) days from the date of entry of this Order Modifying Stay or if any of the payments described herein are not timely made, then First Guaranty shall electronically file with the Court and serve a notice of default to Debtors' last known address, their counsel and the Trustee at the addresses shown hereunder and, if such default is not cured within fifteen (15) days ("Cure Period") from the date noted on the certificate of service along with any payment that has become due subsequent to the Notice of Default and no response is filed within the fifteen (15) days asserting a basis for denial of relief, then, without further notice or order of this Court, First Guaranty is authorized to submit to Court an Order Terminating Automatic Stay; and it is further

ORDERED, that upon entry of the order granting relief from the automatic stay of 11 U.S.C. §362, the Trustee will immediately cease making any payments on First Guaranty's secured claim which were required by the plan. Any amended unsecured claim for a deficiency (which claim must include documents proving that it has liquidated its collateral and applied the proceeds of sale in accordance with applicable state law) must be filed by First Guaranty within 180 days from the date on which the order lifting stay is entered, or such claim against the bankruptcy estate shall be forever barred; and it is further

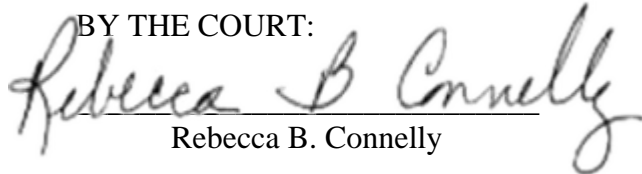
ORDERED, acceptance of any partial payments which do not provide to fully cure the amount stated in the Notice of Default and any subsequent payments which may become due does not constitute a cure of the default; and it is further

ORDERED, that in the event that the Automatic Stay is terminated, the Chapter 13 Trustee shall be relieved of any and all obligation to cure arrearage due to Movant, its successors or assigns; and it is further

ORDERED, that to the extent this case is dismissed, discharged or closed and payments on the Note are not contractually current, First Guaranty may exercise its legal rights under applicable law with respect to the Property; and it is further

ORDERED, that relief is granted as to Patricia Ann Mitchum, the co-debtor, from the automatic stay imposed by §1301(a).

BY THE COURT:



Rebecca B. Connelly

Dated: 8/1/2018

U.S. Bankruptcy Court Judge

I ASK FOR THIS:

/s/ Sameera Navidi
Kathryn Smits, Bar #77337
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Sameera Navidi, Bar #89441
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Leesburg, Virginia 20177
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SEEN AND AGREED:

/s/ Jeremy C. Huang
Jeremy C. Huang, Esquire
Woehrle Dahlberg Jones Yao PLLC
10615 Judicial Dr.
Suite 102
Fairfax, VA 22030
Attorney for the Debtors
Re: Case No. 17-60419-RBC

SEEN AND AGREED WITH RESERVATION
OF RIGHT TO OBJECT TO AMENDED PLAN:

/s/ Herbert L. Beskin
Herbert L. Beskin, Trustee
PO Box 2103
Charlottesville, VA 22902
Re: Case No. 17-60419-RBC

Copies to:

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Debtor

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Co-Debtor

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